

Notice of Allowability

Application No.

10/532,908

Examiner

Thomas C. Barrett

Applicant(s)

STUDER ET AL.

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to application filed April 27, 2005.
2. ☒ The allowed claim(s) is/are 1-25.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date 5-05
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____.
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Brian Rothery on September 15, 2006.

On page 1 lines 7-8, the sentence "The invention concerns an intervertebral disk prosthesis or an artificial vertebral body according to the generic part of patent claim 1." was replaced by:

--BACKGROUND OF THE INVENTION

The invention concerns an intervertebral disk prosthesis or an artificial vertebral body.—

Before line 20, the phrase --BRIEF SUMMARY OF THE INVENTION—was inserted.

On page 1, line 25, the sentence, "The objective set by the invention is achieved with an intervertebral disk prosthesis or an artificial vertebral body, having the features of claim 1." was replaced by:

--The objective set by the invention is achieved with an intervertebral disk prosthesis or an artificial vertebral body, having the features of the disclosed embodiments.—

On page 1, lines 33-34, the sentence, "Further advantageous configurations of the invention are characterised in the dependent claims." was replaced by the sentence:

--Further advantageous configurations of the invention are disclosed herein.—

On page 2, prior to line 16, the phrase -- BRIEF DESCRIPTION OF THE DRAWINGS—was inserted.

On page 5, prior to line 5, the phrase -- DETAILED DESCRIPTION OF THE INVENTION—was inserted.

REASONS FOR ALLOWANCE

The following is an examiner's statement of reasons for allowance:

The prior art fails to disclose or make obvious an intervertebral implant comprising a jacket constructed as bellows having a specific spring rate, the jacket further having a plurality of bellows inserted into one another.

The closest prior art is Zacouto (6,692,495 B1). Zacouto discloses an intervertebral implant comprising bellows surrounded by "one or more intermediate elements (20)" (col. 4, lines 32-40). In Fig. 18, the "one or more intermediate elements"

looks like a bellows, however this is not disclosed in the specification of Zacouto nor is it disclosed as having a spring element.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas C. Barrett whose telephone number is (571) 272-4746. The examiner can normally be reached on Mon. -Fri. from 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Thomas C. Barrett
Examiner
Art Unit 3738

A handwritten signature in black ink that reads "Tom Barrett". The signature is stylized with a large, sweeping initial "T" and a cursive "Barrett".

TOM BARRETT
PRIMARY EXAMINER
TECHNOLOGY CENTER 3700